IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8214 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALDEVBHAI KHENGARBHAI DESAI

Versus

COMMISSIONER OF POLICE

Appearance:

MR MC BAROT for Petitioner

MR.UR BHATT, GOVERNMENT PLEADER for Respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/10/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ petition, under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 15th September, 1999 (Annexure - A) passed by respondent No.1 in respect of detenu in

exercise of his power conferred upon him, under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985. (in short "the Act").

2. As per the papers of grounds of detention, the petitioner-detenu is an "immoral traffic offender within the meaning of Section 2(g) of the Act. Before passing an order of detention, to arrive at a subjective satisfaction, the detaining authority has placed reliance on one Criminal Case lodged in D.C.B. Police Station, Ahmedabad City vide C. R.No.II-398/99 dated 06/06/1999, which has been lodged against the petitioner-detenu for the offences punishable under Sections 3, 4, 5, 6 and 9 of the Immoral Traffic (Prevention) Act, 1956. The detaining authority i.e. the authority who passed an order of detention also placed reliance on statements of two annonymous witnesses whose identity has not been disclosed by claiming privilege under section 9(2) of the Act. As per the papers, the statements of two annonymous witnesses were recorded on 14th September, 1999. That two statements were verified by the detaining authority on 15th September, 1999 and the order of detention came to be passed against the detenue on 15th September, 1999 and that order is challenged in this writ petition.

3. Though rule has been served upon each respondent, the respondents have not filed affidavits-in-reply, in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention referred to in the main writ petition.

4. Mr.M. C. Barot, learned advocate for the petitioner has argued that in view of the principles laid down in the case of KALIDAS CHANDUBHAI KAHAR V/S. STATE OF GUJARAT & ORS. REPORTED IN 1993 (2) GLR 1659, the privilege claimed by the detaining authority is vitiated, because in this case, the detaining authority had no time to do necessary exercise for verifying the correctness of the facts, as also the witnesses and in view of this, the detaining authority has passed an order of detention on 15th September, 1999 which is challenged in this petition is vitiated for want of privilege under section 9(2) of the Act.

5. In view of what is stated hereinabove, this writ petition deserves to be allowed and accordingly it is allowed. The impugned order of detention dated 15th September, 1999 passed by respondent No.1 - detaining authority is quashed and set aside. The detenu is ordered to be released forthwith if he is not wanted for

any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H. H. Mehta,J.)

(vijay)